89-1119

No. ———

Supreme Court, U.S.
FILED
JAN 11 1990
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

PATRICK A. HERRING, JR., *et al.*,
Petitioners,

v.

DELTA AIR LINES INC. and
AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RAYMOND C. FAY
Counsel of Record
THOMAS R. GIBBON
BELL, BOYD & LLOYD
1615 L Street, N.W.
Suite 1200
Washington, D.C. 20036
(202) 466-6300
Counsel for Petitioners

January 1990

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTIONS PRESENTED

1. When the surviving carrier in an airline merger promises to arbitrate merger-related labor disputes in a merger contract, is that promise enforceable under the Railway Labor Act by the affected employees, particularly where the challenged action is tainted by threats, intimidation, coercion, and breach of the duty of fair representation?

2. When the surviving carrier in an airline merger promises to arbitrate merger-related labor disputes in a merger contract, is that promise enforceable under the Federal Arbitration Act by the affected employees, or is it excluded from enforcement because it is a "contract of employment"?

LIST OF PARTIES

The petitioners are Patrick A. Herring, Jr., and the other 660 pilots listed in the Appendix at 27a.

The respondents are Delta Air Lines, Inc. and the Air Line Pilots Association, International.

The parties to the proceeding below are petitioners and respondents in this Court.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
LIST OF PARTIES	ii
OPINIONS BELOW	1
JURISDICTION	2
STATUTES INVOLVED	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	7
I. THE ISSUE OF WHETHER EMPLOYEES IN THE AIRLINE INDUSTRY MAY ENFORCE AN EMPLOYER'S PROMISE TO ARBITRATE MERGER-RELATED LABOR DISPUTES IS AN IMPORTANT QUESTION OF FEDERAL LAW SINCE REGULATORY AGENCIES NO LONGER IMPOSE OR ENFORCE ARBITRATION REQUIREMENTS	7
II. THE ARBITRATION OF LPP DISPUTES UNDER THE RLA PRESENTS AN IMPORTANT QUESTION OF FEDERAL LAW THAT WARRANTS REVIEW BY THE COURT	11
III. CERTIORARI SHOULD BE GRANTED TO RESOLVE THE CONFLICT IN THE CIRCUITS CONCERNING THE SCOPE OF THE FAA'S ENFORCEMENT PROVISIONS	16
CONCLUSION	17
APPENDIX	

TABLE OF AUTHORITIES

Cases	Page
ALPA v. Department of Transportation, 838 F.2d 563 (D.C. Cir. 1988)	10
ALPA v. Transamerica Airlines, 817 F.2d 510 (9th Cir.), *cert. denied*, 484 U.S. 963	13, 14
AT&T Technologies, Inc. v. Communications Workers of America, 475 U.S. 643 (1986)	8
Allegheny-Mohawk Merger Case, 59 C.A.B. 19 (1972)	9, 11
Allegheny-Mohawk Merger Case (Complaint of Kingston and Foster), CAB Order 79-11-53 (1979)	15
American Airlines, Inc. v. CAB, 445 F.2d 891 (2d Cir. 1971), *cert. denied*, 404 U.S. 1015 (1972)	12, 14
American-Trans Caribbean Merger, CAB Order 71-5-30 (1971)	11
Bernard v. ALPA, 873 F.2d 213 (9th Cir. 1988)	16
Brotherhood of Ry. Airline & Steamship Clerks v. Atchison, Topeka and Santa Fe Ry. Co., 847 F.2d 403 (7th Cir. 1988)	14
Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co., 394 U.S. 369 (1969)	13
Chicago & Northwestern Ry. Co. v. United Transportation Union, 402 U.S. 570 (1971)	13, 14
Chicago River & Indiana R.R. Co. v. Brotherhood of R.R. Trainmen, 229 F.2d 926 (7th Cir. 1956), *aff'd*, 353 U.S. 30, *reh'g denied*, 353 U.S. 948 (1957)	13
Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213 (1985)	8
Delta Air Lines, Employee Integration, 63 C.A.B. 700 (1973)	11-12
Delta Air Lines, Inc. v. CAB, 574 F.2d 546 (D.C. Cir.), *cert. denied*, 439 U.S. 819 (1978)	10, 12
Delta-Chicago & Southern Merger Case, 16 C.A.B. 647 (1952)	11, 14
Flying Tiger-Slick Merger Case, 18 C.A.B. 326 (1954)	11
Genesco, Inc. v. T. Kakiuchi & Co., 815 F.2d 840 (2d Cir. 1987)	17

TABLE OF AUTHORITIES—Continued

	Page
Int'l Ass'n of Machinists v. Alaska Airlines, Inc., 813 F.2d 1038 (9th Cir. 1987)	13
Int'l Brotherhood of Teamsters v. Texas Int'l Airlines, 717 F.2d 157 (5th Cir. 1983)	12
McAllister Bros., Inc. v. A&S Transportation Co., 621 F.2d 519 (2d Cir. 1980)	17
Moses H. Cone Memorial Hosp. v. Mercury Const. Corp., 460 U.S. 1 (1983)	8
New Orleans & Northeastern R.R. Co. v. Bozeman, 312 F.2d 264 (5th Cir. 1963)	12
Pan American—Acquisition of Control of, and Merger with National, CAB Order 82-4-75 (1982)	14
Pan American World Airways, Inc. v. CAB, 683 F.2d 554 (D.C. Cir. 1982)	10
Robesky v. Qantas Empire Airways Limited, 573 F.2d 1082 (9th Cir. 1978)	16
Rodriguez De Quijas v. Shearson/American Exp., Inc., 109 S.Ct. 1917 (1989)	8, 17
Rogers v. ALPA, No. H-84-3985 (S.D.Tex. Nov. 14, 1988)	16
Shearson/American Express, Inc. v. McMahon, 482 U.S. 220, *reh'g denied*, 483 U.S. 1056 (1987)	8
Shearson Lehman/American Express v. Bird, 110 S.Ct. 225 (1989)	7-8
Texas & N.O.R. Co. v. Brotherhood of Ry. & S.S. Clerks, 281 U.S. 548 (1930)	16
United-Capital Merger Case, 33 C.A.B. 307 (1961)	9
United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960)	8
Valero Refining, Inc. v. M/T Lauberhorn, 813 F.2d 60 (5th Cir. 1987)	17
Statutes	
Federal Arbitration Act, 9 U.S.C. §§ 1-13	2, 8
9 U.S.C. § 1	17
9 U.S.C. § 2	16

TABLE OF AUTHORITIES—Continued

	Page
28 U.S.C. § 1254(1)	2
28 U.S.C. §§ 1331, 1332, 1337, 2201	6
Railway Labor Act, 45 U.S.C. §§ 151-163, 181-188	8
45 U.S.C. § 151a	2, 13
45 U.S.C. § 152 First	2, 7, 15
45 U.S.C. § 152 Second	7
49 U.S.C. App. § 1551(a)(7)	10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

No.

PATRICK A. HERRING, JR., *et al.*,
Petitioners,

v.

DELTA AIR LINES INC. and
AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioners Patrick A. Herring, Jr., *et al.*, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit, entered in the above-entitled proceeding on October 13, 1989.

OPINIONS BELOW

The unpublished memorandum of the Court of Appeals for the Ninth Circuit, entered October 13, 1989, is reprinted in the Appendix at 1a.

The unreported memorandum of decision and order of the United States District Court for the Central District of California (Kelleher, D.J.), entered May 12, 1988, is reprinted in the Appendix at 9a.

JURISDICTION

The memorandum of the Court of Appeals for the Ninth Circuit affirming the judgments of the district court was entered on October 13, 1989. The jurisdiction of this Court to review the judgment of the Ninth Circuit is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

Railway Labor Act, 45 U.S.C. §§ 151a, 152 First; Federal Arbitration Act, 9 U.S.C. §§ 1, 2, 4. The text of the statutory sections is set forth in the Appendix, 21a-24a.

STATEMENT OF THE CASE

Petitioners are the majority of the former Western Air Lines, Inc. ("Western") pilots who are now employed by Delta Air Lines, Inc. ("Delta") as a result of a merger between the two companies. They seek to enforce a promise made by Delta to arbitrate labor disputes arising from the merger. Plaintiffs seek arbitration of their claim that the Western and Delta pilot seniority lists were integrated in an unfair and inequitable manner, both as to the list integration process and as to the product of that process. Petitioners do not seek to have the federal courts adjudicate the merits of the seniority list integration dispute, but seek the courts' assistance only to enforce Delta's promise to arbitrate the dispute.

On September 9, 1986, Western and Delta entered into an agreement and plan of merger which required that Delta provide Labor Protective Provisions ("LPPs") which were no less favorable than the LPPs ordered by the Civil Aeronautics Board in previous airline mergers. In general, such LPPs provide monetary allowances to employees adversely affected by the transaction, the equitable integration of seniority lists, and binding arbitration of disputes relating to the LPPs. Section 3 of the LPPs requires that the seniority lists be integrated "in a fair and equitable manner" (A.25a). Section 13 of the LPPs

provides that "any dispute or controversy . . . with respect to the protections provided herein . . . may be referred by any party to an arbitrator. . . ." *Id.*

Upon stockholder approval of the Delta/Western merger in December 1986, the Western and Delta pilot merger committees began negotiations to arrive at an integrated seniority list to be jointly presented to Delta. Since both pilot groups were represented by the Air Line Pilots Association ("ALPA"), the negotiations were subject to the provisions of ALPA Merger Policy. This process involves only the two pilot groups whose merger representatives have authority to deal only with each other and do not have authority to engage in negotiations with the carrier. Although the ALPA Merger Policy process can result in ALPA arbitration between the two pilot groups, that is separate from LPP arbitration. Arbitration under the LPPs occurs if the carrier refuses to accept the joint list or if there is a dispute over the integrated list.

Delta's interference in these internal ALPA negotiations began almost immediately. Delta management repeatedly insisted that the seniority list be put together on a timetable far more accelerated than set forth in the ALPA Merger Policy. At the same time, Delta management insisted upon specified "parameters" for the list which precluded negotiation of the proposals presented by the Western pilot merger representatives. Ultimately, Delta mandated that the list be put together on the basis of "a ratio by equipment category and seat"—precisely the method of integration advanced by the Delta pilots. Delta management increased its pressure upon the former Western pilots by repeatedly stating, contrary to its promises in the LPPs, that it opposed arbitration and would not accept an arbitrated decision it did not like.

Delta's interference in the internal ALPA negotiations culminated in a meeting at Delta headquarters in Atlanta that was characterized by Delta's current Chairman as a

"showdown meeting." This May 19, 1987 meeting occurred just after the Western pilot merger representatives had declared an "impasse" in negotiations with the Delta pilots. At the May 19 meeting, Delta's then Chairman presented an ultimatum. Delta gave the pilots just ten days to finalize the list. If not done, Delta threatened to take a number of actions adverse to the Western pilots, including the furlough of one third of the Western pilot workforce, costing more than 300 pilots their jobs.

Delta's furlough threats against the Western pilots were unprecedented in the industry since furloughs typically result from reduced flying needs, with pilots systemwide being given the opportunity to "bump" pilots of less seniority. Also, it was unprecedented for a carrier to propose furlough from only a targeted segment of its workforce. Delta's motives against the former Western pilots were underscored by its own prior longstanding policy against furloughs.

On May 28, 1987, one day before Delta management's deadline expired, the Western representatives capitulated and signed a seniority list with the Delta pilots which was nearly identical to the list mandated by Delta management. While the list was also signed by Delta management, it was not made part of the collective bargaining agreement since the merger representatives were not authorized to bargain with Delta. The list was incorporated into a collective bargaining agreement several months later, after plaintiffs filed suit requesting arbitration under the LPPs.

During the 5-month period of coercion and intimidation against the Western pilots, ALPA repeatedly failed to enforce its own Merger Policy or to intervene with Delta on the pilots' behalf to assure that the ALPA policy would be enforced. ALPA made no attempt to rebuff Delta's totally unrealistic timetables for the integration process which were three to seven months more accelerated than the schedule in ALPA's Merger Policy. When the West-

ern pilot committee advised the President of ALPA (himself a Delta pilot) of an "impasse" in the seniority negotiations and requested the services of a mediator under the ALPA Merger Policy, the President never responded.

The effect of Delta's coercion and ALPA's failure to enforce its Merger Policy was devastating to the Western pilots. A pilot's place on the seniority list is the most critical factor in his career. It affects his assigned base, his position in the cockpit, the equipment he can fly, the routes on which he can work, his compensation, and his pension. Under the May 28 list, former Western pilots fell below pre-merger Delta pilots who were hired many years later and have substantially fewer years of service. Near the bottom of the list, former Western pilots with as many as five years of active service were placed on the list below Delta probationary pilots who, at the time the merger was announced, had never held a line assignment with Delta or even qualified on any of Delta's airplanes. Even though the premerger Western/Delta pilot ratio was approximately 1 to 3, former Western pilots occupy just 95 of the top 600 positions on the May 28 list. Over time, the situation worsens. In a projection by plaintiffs of the May 28 list to the year 2005, former Western pilots will occupy just 5 of the top 600 positions, whereas under a date of hire list, they would occupy 189 of the top 600 positions.

In June, 1987, in accordance with sections 3 and 13 of the LPPs, plaintiffs protested the integrated seniority list. They claimed that the list and the process used to integrate the list were not fair and equitable as required by the LPPs. They sought reformation of the list, and failing that, arbitration under the LPPs. Delta and ALPA refused to reform the list. Plaintiffs then requested that the National Mediation Board provide seven names from which an arbitrator could be selected. When the Board furnished the requested names, both ALPA and Delta refused to participate in the selection process and the arbitration.

In August, 1987 plaintiffs filed suit in the U.S. District Court for the Central District of California to enforce Delta's promise to arbitrate merger-related labor disputes under the LPPs. Subject matter jurisdiction was conferred by 28 U.S.C. §§ 1331, 1332, 1337, 2201. Plaintiffs sought to enforce the arbitration promise under the Railway Labor Act, the Federal Arbitration Act, and common law contract. Plaintiffs also asserted claims against ALPA for breach of its duty of fair representation, *inter alia*, because of its failure to comply with its own Merger Policy.

On May 12, 1988, the district court granted summary judgment in favor of defendants Delta and ALPA (A. 9a). The court declared that neither the Railway Labor Act, nor the Federal Arbitration Act, nor the LPPs provided plaintiffs with arbitration rights. The district court denied plaintiffs' Railway Labor Act claims on the theory that the Act's duty to maintain agreements and to arbitrate arises only with respect to disputes under collective bargaining agreements and that the dispute did not involve interpretation of a collective bargaining agreement. Paradoxically, the court rejected plaintiffs' Federal Arbitration Act claim because it found the dispute concerned a collective bargaining agreement claim and thus fell within the Act's "contract of employment" exception.

The district court rejected plaintiffs' showing that, even in the presence of a union agreement, LPP arbitration rights may be enforced if the disputed seniority list was arrived at in bad faith, in a deliberate attempt to subvert the LPP requirements, or in other compelling circumstances. The court disregarded plaintiffs' claims of Delta's bad faith by stating that the coercion, intimidation and threats by Delta were acceptable collective bargaining practices. The court ignored plaintiffs' contentions that the coercion occurred during internal ALPA negotiations and that the merger representatives did not and could not bargain with Delta on the issue because

they were authorized to bargain only with each other—not with the carrier. The district court, without any discussion of the facts, also granted summary judgment on the unfair representation claim on the ground that ALPA acted reasonably. The district court denied all other motions, including the motion to join additional plaintiffs in the action.

Plaintiffs appealed to the Ninth Circuit. In a 7-page unpublished opinion, the appeals court also declined to enforce Delta's promise to arbitrate (A.1a). It determined that plaintiffs could not enforce the promise under the Railway Labor Act, 45 U.S.C. §§ 151a and 152 First and Second, because it limited those sections to be applicable to disputes which arise out of collective bargaining agreements. It also declined to enforce Delta's arbitration promise under the Federal Arbitration Act because Delta's promise in the merger agreement was not "a written agreement between the parties to arbitrate," and if it were, it would be excluded from FAA coverage because it was "a contract of employment." It did not address the LPP precedent which authorizes arbitration in the event of bad faith, and it also did not address plaintiffs' claims that the seniority list was a product of Delta's bad faith, coercion and intimidation.

REASONS FOR GRANTING THE WRIT

I. THE ISSUE OF WHETHER EMPLOYEES IN THE AIRLINE INDUSTRY MAY ENFORCE AN EMPLOYER'S PROMISE TO ARBITRATE MERGER-RELATED LABOR DISPUTES IS AN IMPORTANT QUESTION OF FEDERAL LAW SINCE REGULATORY AGENCIES NO LONGER IMPOSE OR ENFORCE ARBITRATION REQUIREMENTS

The decision of the lower court, if unreviewed, will thwart the strong federal policy of enforcing agreements to arbitrate. The importance of this policy favoring arbitration was recently reaffirmed by this Court in the area of pensions, *Shearson Lehman/American Express v.*

Bird, 110 S.Ct. 225 (1989), and securities transactions, *Rodriguez De Quijas v. Shearson/American Exp., Inc.*, 109 S.Ct. 1917 (1989). The Court should now enforce this policy in the context of national transportation and airline mergers.

The national policy in favor of arbitration is equally strong under the Railway Labor Act ("RLA"), 45 U.S.C. §§ 151-163, 181-188, and under the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-13. In the labor law context, this Court has stated:

> [a]n order to arbitrate . . . should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage.

AT&T Technologies, Inc. v. Communications Workers of America, 475 U.S. 643, 650 (1986), *quoting United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582-83 (1960).

Similarly, the FAA "establishes a 'federal policy favoring arbitration' . . . requiring that '[courts] rigorously enforce agreements to arbitrate'." *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220, 107 S.Ct. 2332, 2337, *reh'g denied*, 483 U.S. 1056 (1987), *quoting Moses H. Cone Memorial Hosp. v. Mercury Const. Corp.*, 460 U.S. 1, 24 (1983), and *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 221 (1985). Under the FAA, "as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration. . . ." *Moses H. Cone*, 460 U.S. at 24-25.

The lower court's decision has created a large loophole in the federal arbitration scheme where an employee's promise to arbitrate airline merger-related labor disputes is not enforceable under either the RLA or the FAA. This loophole is of national significance because such

promises to arbitrate have replaced arbitration orders which, until recently, were imposed and enforced by the federal agencies regulating the airline industry.

The result of the lower court's loophole is much more severe than in *Rodriquez* or *Bird* where the choice was whether the dispute should be resolved through arbitration or formal court procedures. Here, as a result of the lower court's erroneous interpretation of the RLA and FAA, the labor dispute arising under the merger will not be resolved at all by any impartial tribunal. This consequence is directly contrary to national labor policy in general and to national transportation policy in particular, where the peaceful and prompt resolution of labor issues has been declared to be in the national interest.

For almost four decades, the Civil Aeronautics Board ("CAB"), following the practice in the railroad industry dating back to the 1930s, recognized that the merger of air carriers is likely to cause labor disputes which could cripple the surviving carrier's transportation capacity and be detrimental to the national interest. Accordingly, in approving airline mergers, the CAB imposed Labor Protective Provisions ("LPPs") upon the surviving carrier.[1] The form of LPPs became standardized, along the lines of the *Allegheny-Mohawk*[2] LPPs used in the Western/Delta merger.

These LPPs gave the employees certain rights with respect to transfers, moving allowances and seniority, which are issues inherent in transportation mergers. Among the rights provided was the right to arbitrate any dispute arising under the LPPs. The purpose of the LPP arbitration requirement was to resolve labor dis-

---

[1] The history of the CAB's imposition of LPPs in airline mergers is recounted in *United-Capital Merger Case*, 33 C.A.B. 307, 323 n.71 (1961).

[2] *Allegheny-Mohawk Merger Case*, 59 C.A.B. 19 (1972).

putes in a prompt, economical, and adequate fashion and thereby to protect interstate commerce. These are the same goals of the RLA and FAA.[3]

In the 1980s, the federal government changed its policy and declined to impose LPPs upon the merging carriers as a matter of course. *See ALPA v. Department of Transportation*, 838 F.2d 563, 565 (D.C. Cir. 1988). Instead, as in the Delta/Western merger at issue here, the Department of Transportation ("DOT"), successor to the CAB for these purposes, relied upon the adoption of the LPPs by carriers involved. As of January 1, 1989, DOT's authority over airline mergers expired altogether, *see* 49 U.S.C. App. § 1551(a)(7), and the legal underpinning for the issuance of LPPs expired with it.

Before this change in federal policy, enforcement of the arbitration provisions in the LPPs was accomplished in the first instance by petitions to the federal agency which imposed the LPPs. Now, affected employees can seek to enforce their arbitration rights only in federal district court. By refusing to enforce the LPP arbitration clause under the FAA or the RLA, the lower court's decision effectively leaves employees without a remedy to enforce arbitration rights if the employer reneges on its arbitration promise, as Delta did here. Because the issue of the arbitrability of airline merger seniority disputes under LPPs is an important question of federal law that will recur in other airline mergers, this Court should grant the petition for certiorari.

---

[3] Courts have noted that the enforcement of LPPs, and particularly the LPP dispute resolution mechanism leading to arbitration, employed labor law principles developed under the RLA. *See Delta Air Lines, Inc. v. CAB*, 574 F.2d 546, 550-51 (D.C. Cir.), *cert. denied*, 439 U.S. 819 (1978); *Pan American World Airways, Inc. v. CAB*, 683 F.2d 554, 559 (D.C. Cir. 1982).

II. THE ARBITRATION OF LPP DISPUTES UNDER THE RLA PRESENTS AN IMPORTANT QUESTION OF FEDERAL LAW THAT WARRANTS REVIEW BY THE COURT

In order to close the loophole opened by the court below, the Court should review the enforceability of an employer's arbitration promise under the RLA. The promise made by Delta here was the same Section 13 LPP formulation formerly imposed by the regulatory agencies that "any dispute or controversy . . . with respect to the protections provided herein . . . may be referred by any party to an arbitrator" (A.25a). The court below refused to honor this promise because, in its view, the RLA is applicable only to resolve disputes between unions and employers which arise out of collective bargaining agreements. It found no such disputes and, therefore, refused to apply the RLA to permit individual employees to enforce Delta's arbitration promise.

First, the court below extinguished the RLA right to arbitrate "any dispute" under the LPPs, including disputes raised by employees or groups of employees other than unions (A.3a-4a). In *Allegheny-Mohawk*, 59 C.A.B. at 33, the CAB emphasized that under Section 13 a party "has the unqualified right to demand arbitration of any bona fide dispute of a nonfrivolous nature. . . ."[4]

---

[4] *See Flying Tiger-Slick Merger Case*, 18 C.A.B. 326, 347 (1954) ("the arbitration provision provided by the Board in its labor protective clauses should be used to settle any dispute between employee groups as well as between employees and carriers"); *Delta-Chicago & Southern Merger Case*, 16 C.A.B. 647, 655 (1952) ("Moreover, there is nothing in the Delta-C&S proposal [Section 13] which would inhibit the right of a dissatisfied Delta employee or group of such employees to seek arbitration of grievances over integration of seniority lists."); *American-Trans Caribbean Merger*, CAB Order 71-5-30 at 4 (1971) ("any affected party has the right to arbitrate any bona fide dispute of a non-frivolous nature"); *American-Trans Caribbean Merger*, 60 C.A.B. 835, 837 n.4 (1972) ("clearly the provisions [LPP Section 13] were intended to be applicable whether two or more parties are involved"); *Delta*

The courts similarly have recognized the absolute right to arbitrate disputes under Section 13 or similar provisions. *Delta Air Lines, Inc., v. CAB*, 574 F.2d 546, 548 (D.C. Cir.), *cert. denied*, 439 U.S. 819 (1978) (Delta "conceded its duty to arbitrate the seniority dispute upon demand of dissatisfied stewardesses or their authorized representative"); *American Airlines, Inc. v. CAB*, 445 F.2d 891, 894 (2d Cir. 1971), *cert. denied*, 404 U.S. 1015 (1972) (either party has "the absolute right to select arbitration").[5]

Second, the decision of the court below unlawfully restricts the application of the RLA by confining that Act to disputes arising out of collective bargaining agreements (A.4a). This Court should grant review to confirm that the promise to arbitrate disputes under the LPPs is enforceable directly under the RLA.

In 45 U.S.C. § 152 First, the RLA imposes a duty upon all carriers to:

> exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements *or otherwise*, in order to avoid any interruption to commerce or to the operation of any carrier growing out

---

Air Lines, Employee Integration, 63 C.A.B. 700, 702 (1973) ("Delta has conceded, at least initially, that it is under a duty to arbitrate any unresolved seniority issue upon demand of any dissatisfied former Northeast employee or group of employees, and in our view that obligation is clear.").

[5] *See New Orleans & Northeastern R.R. Co. v. Bozeman*, 312 F.2d 264, 268 (5th Cir. 1963) ("The language plainly means that either party may make an election, binding on the other, to refer the dispute to arbitration."); *Int'l Brotherhood of Teamsters v. Texas Int'l Airlines*, 717 F.2d 157, 160 (5th Cir. 1983) ("They [LPPs] require also that arbitration be available at the instance of any employee or group of employees to resolve any dispute relating to seniority integration or any other dispute about the application of the labor protective provisions.").

> of any dispute between the carrier and the employees thereof. (Emphasis added)

See 45 U.S.C. § 151a (purposes of the Act).

A carrier's duty under Section 152 First to "make and maintain agreements" and to "settle all disputes" lies at the "heart" of the RLA, and that obligation may be enforced "by appropriate judicial means." *Chicago & Northwestern Ry. Co. v. Transportation Union*, 402 U.S. 570, 574, 581 (1971) (quoting in part *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 377 (1969)). The lower court's holding is contrary to the express terms of the statute and is contrary to the federal court's duty to enforce the RLA. *See ALPA v. Transamerica Airlines*, 817 F.2d 510, 514 (9th Cir.), *cert. denied*, 484 U.S. 963 (1987); *see also Int'l Ass'n of Machinists v. Alaska Airlines, Inc.*, 813 F.2d 1038, 1040 (9th Cir. 1987) (federal courts have direct jurisdiction over RLA claims where judicial enforcement is the only means of enforcing the RLA).

In limiting Section 152 First to disputes that arise out of collective bargaining agreements, the Ninth Circuit apparently followed the district court's analysis of the RLA, which cited *Chicago River & Indiana R.R. Co. v. Brotherhood of R.R. Trainmen*, 229 F.2d 926 (7th Cir. 1956), *aff'd*, 353 U.S. 30, *reh'g denied*, 353 U.S. 948 (1957). In *Chicago River*, the court held that the RLA authorizes the issuance of injunctions to prevent strikes over minor disputes. The passage relied upon by the district court described the distinction between a major and minor dispute. It was in reference to minor disputes that the *Chicago River* court stated that "the act contemplates the existence of a collective agreement already concluded." 229 F.2d at 929. The court did not state or even imply that a carrier's duty under Section 152 was limited to the settlement of minor disputes.

The dispute over plaintiffs' right to arbitration under the LPPs here is neither a "minor" nor a "major" dis-

pute as the courts have employed those terms in RLA decisions, because the LPP protections are independent of the collective bargaining process. In these circumstances, the court has jurisdiction directly under the RLA to address carrier and union violations of the LPPs. *See Chicago & Northwestern Ry., supra*; *Transamerica Airlines, supra*; *Brotherhood of Ry. Airline & Steamship Clerks v. Atchison, Topeka and Santa Fe Ry. Co.*, 847 F.2d 403, 408 (7th Cir. 1988) ("federal court may exercise jurisdiction over violations of the Railway Labor act without regard to the court's characterization of the dispute as major or minor").

Third, the duty to settle disputes through arbitration takes on even greater significance in this case where plaintiffs claimed that the integrated seniority list was a product of unlawful threats, intimidation and coercion on Delta's part and a breach of the duty of fair representation on ALPA's part.

In disregarding the Western pilots' arbitral rights on the ground that Delta and ALPA had reached an agreement on the integrated seniority list, the Ninth Circuit blinded itself to whether the means by which the list was agreed upon vitiated the agreement itself. The court of appeals followed the lead of the district court which erroneously held that Section 3 of the LPPs universally bars arbitration where the carrier and the union have agreed on a merged seniority list. Both courts ignored the important exception carved out by the CAB, which would allow arbitration despite a union-carrier agreement "on a showing of bad faith . . . or other compelling circumstances," *Delta-Chicago & Southern*, 29 C.A.B. at 1349, or where the list was "tainted by the union's breach of its duty of fair representation," *Pan American-Acquisition of Control of, and Merger with National*, CAB Order 82-4-75 at 3 (1982).[6]

---

[6] *See American Airlines, Inc. v. CAB*, 445 F.2d at 893 (court upheld CAB arbitration order notwithstanding agreement between

The Ninth Circuit did not address the pilots' prominent argument that the agreement to the list was void because it was secured by threats, intimidation, and coercion. It also refused to address the pilots' showing that even if such duress was permissible as part of the give and take of collective bargaining, no such collective bargaining took place. The Western pilot representatives who received Delta's threats and signed the list were not ALPA collective bargaining representatives and were not authorized to enter into agreements with the carrier. They were authorized only to reach agreement with the other pilot group, after which the union's authorized representatives would attempt to bargain with Delta and to have the agreement inserted in the collective bargaining agreement. For this reason, Delta was able to exert its economic power over the Western merger representatives who lacked any authority or economic leverage to resist Delta's demands. If the lower court's decision remains unreviewed, an employer's promise of arbitration, even if otherwise enforceable under the RLA, could be made hollow by using threats to force a pre-arbitration settlement.[7]

American and the union representing American pilots); *see also Allegheny-Mohawk Merger Case (Complaint of Kingston and Foster)*, CAB Order 79-11-53 at 14 (1979) (arbitration not ordered where there was no defect in the ALPA merger procedures and no interference by the carrier in the list merger process; carrier "assumed a position of neutrality").

[7] The lower court also did not attempt to address the pilots' claim that the threats, coercion and intimidation were independent violations of 45 U.S.C. § 152 which requires carriers to exert every reasonable effort to maintain agreements concerning labor conditions. As the Court has recognized:

> All the proceedings looking to amicable adjustments and to agreements for arbitration of disputes, the entire policy of the act, must depend for success on the uncoerced action of each party through its own representatives to the end that agreements satisfactory to both may be reached and the peace

Finally, the lower court did not attempt to address the pilots' claim that ALPA violated its duty of fair representation when it failed to follow its own internal procedures for merging the seniority lists. *See Bernard v. ALPA*, 873 F.2d 213, 216 (9th Cir. 1988); *Rogers v. ALPA*, No. H-84-3985 (S.D.Tex. Nov. 14, 1988); *see also Robesky v. Qantas Empire Airways Limited*, 573 F.2d 1082, 1090 (9th Cir. 1978) (even non-hostile acts of omission by union may breach duty of fair representation where they fall short of minimum standards of fairness, prejudice employees, and do not relate to legitimate union interests).

III. CERTIORARI SHOULD BE GRANTED TO RESOLVE THE CONFLICT IN THE CIRCUITS CONCERNING THE SCOPE OF THE FAA'S ENFORCEMENT PROVISIONS

There is a dispute between the Ninth Circuit and other circuits with respect to whether signatories to an agreement are the only parties who may enforce an agreement to arbitrate. The court below ruled that the Western pilots could not rely upon the FAA because the statute "is invoked only by a written agreement between the parties to arbitrate" (A.5a). Apparently, the Court concluded that because the Western pilots did not sign the merger agreement, they were not parties to the agreement who were entitled to enforce the employer's promise to arbitrate. This reasoning is contrary to the terms of the statute which does not limit enforcement to contract signatories. Instead it broadly states the principle that a written provision to settle controversies by arbitration shall be valid, irrevocable and enforceable. 9 U.S.C. § 2. Other circuits considering the issue

---

essential to the uninterrupted service of the instrumentalities of interstate commerce may be maintained.

Texas & N.O.R. Co. v. Brotherhood of Ry. & S.S. Clerks, 281 U.S. 548, 569 (1930).

have decided that ordinary contract principles determine who is bound by a promise to arbitrate and that the parties involved need not be signatories. *McAllister Bros., Inc. v. A&S Transportation Co.*, 621 F.2d 519, 524 (2d Cir. 1980); *Genesco, Inc. v. T. Kakiuchi & Co.*, 815 F.2d 840, 846 (2d Cir. 1987); *Valero Refining, Inc. v. M/T Lauberhorn*, 813 F.2d 60, 63-64 (5th Cir. 1987).

Certiorari should also be granted to resolve the important federal question concerning the "contracts of employment" exclusion under the FAA. 9 U.S.C. § 1. The court below, apparently drawing upon the district court's incorrect holding that the LPPs are "indistinguishable from a collective bargaining agreement" (A.15a), erroneously held that the merger agreement between Western and Delta was a contract of employment and unenforceable under the FAA (A.5a). The court cited no basis for this decision, which is contrary to the Court's "strong endorsement of the federal statutes favoring [arbitration]." *Rodriguez*, 109 S.Ct. at 1920.

CONCLUSION

For these reasons, a writ of certiorari should be issued to review the opinion and judgment of the Ninth Circuit.

Respectfully submitted,

RAYMOND C. FAY
Counsel of Record
THOMAS R. GIBBON
BELL, BOYD & LLOYD
1615 L Street, N.W.
Suite 1200
Washington, D.C. 20036
(202) 466-6300
Counsel for Petitioners

January 1990

APPENDIX

APPENDIX TABLE OF CONTENTS

	Page
Memorandum, U.S. Court of Appeals, Ninth Circuit (October 13, 1989)	1a
Order denying motion for remand, U.S. Court of Appeals, Ninth Circuit (September 11, 1989)	8a
Memorandum of Decision and Order, U.S. District Court, Central District of California (May 10, 1989)	9a
Minute Order denying motion pursuant to Fed. R. Civ. P. 60(b) (2), U.S. District Court, Central District of California (July 25, 1989)	19a
Text of Statutes Involved In This Case	21a
a) Railway Labor Act, 45 U.S.C. §§ 151a, 152 First	21a
b) Federal Arbitration Act, 9 U.S.C. §§ 1, 2, 4	22a
Text of Delta-Western Labor Protective Provisions, Sections 3 and 13	25a
List of Petitioners	27a

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 88-6182
DC No. CV-87-5725-RJK

PATRICK A. HERRING, JR.; RICHARD A. BREMS; JOSEPH HALEY; RONALD L. JENKINS, *et al.*,
Plaintiffs-Appellants,

v.

DELTA AIR LINES, INC.; AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,
Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California
Robert J. Kelleher, District Judge Presiding

Argued and Submitted: June 27, 1989
Pasadena, California

MEMORANDUM *

[Filed Oct. 13, 1989]

Before: NELSON and BOOCHEVER, Circuit Judges, and BROWNING ** District Judge.

---

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** Hon. William D. Browning, United States District Judge for the District of Arizona, sitting by designation.

The plaintiffs-appellants, Patrick Herring and a group of Delta Airline pilots, appeal the district court's grant of summary judgment to defendants-appellees, Delta Air Lines, Inc., ("Delta") and Air Line Pilots Association, International, ("ALPA"). The plaintiffs-appellants also appeal the district court's denial of their motions to compel discovery, to strike portions of declarations, and to add more plaintiffs to their complaint. The district court had jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332, 1337, and 2201. The appellate court has jurisdiction pursuant to 28 U.S.C. § 1291. We review grants of summary judgment *de novo*. *Eagle v. Am. Tel. & Tel. Co.*, 769 F.2d 541, 547 (9th Cir. 1985). We review denials of motions to compel discovery and to strike portions of declarations for abuse of discretion. *Draper v. Coombs*, 792 F.2d 915, 924 (9th Cir. 1986). We review the denial of leave to amend after a responsive pleading has been filed for an abuse of discretion. *Klamath-Lake Pharmaceutical Ass'n v. Klamath Medical Serv. Bureau*, 701 F.2d 1276, 1292 (9th Cir.), *cert. denied*, 464 U.S. 822 (1983).

In 1986, two airlines, Delta and Western Airlines, Inc., ("Western"), agreed to merge. As part of the merger agreement, Delta, the surviving entity, pledged to negotiate an integration of the two pilot seniority lists with ALPA, the pilots' union. Both Delta's pilots and Western's pilots were represented by ALPA. Delta stated that the labor issues arising during implementation of the merger would be performed according to a system of industry practices known as labor protection provisions ("LPPs").

The integration of a seniority list involves much more than listing pilots according to the date that each began work. It encompasses such variables as the pilot's rank (*e.g.*, captain, first officers, etc.), and the kind of aircraft with which a pilot has had experience. Therefore, the allocation of employment costs and benefits created by a

merger is a difficult one. After strenuous negotiations, management reached an agreement with the union. The agreement was incorporated into the Delta-ALPA collective bargaining agreement.

This agreement was acceptable to most of the pilots but was unacceptable to Herring and to a majority of the pilots who formerly had flown for Western. These pilots seek to overturn the agreement between Delta and ALPA and to send the matter to arbitration. They rest their claim on numerous grounds. The pilots allege that: 1) the appellees violated the LPPs; 2) the appellees violated the Railway Labor Act ("RLA"); 3) the appellees violated the Federal Arbitration Act ("FAA"); 4) the appellees breached a contract in which the appellants were third-party beneficiaries; and 5) ALPA did not fulfill its duty of fair representation ("DFR") to appellants. We affirm the judgments of the district court.

DISCUSSION

I. The Labor Protection Provisions Grounds

Originally, government regulatory agencies imposed LPPs as a condition of allowing mergers between railway systems. The LPPs served to protect the employees whose job security could be altered through a merger. As similar consolidations occurred in the airline industry, the government standardized and imposed analogous LPPs. Following the Airline Deregulation Act of 1978, the government no longer imposed LPPs. However, the parties to a merger may adopt, as part of their agreement, these standardized provisions. In this merger, the parties voluntarily accepted these standardized provisions.

Section 3 of the LPPs governs the integration of seniority lists following a merger between two carriers. Section 3 provides:

> In so far as the merger affects the seniority rights of the carriers' employees, provisions shall be made

> for the integration of seniority lists in a fair and equitable manner, including, where applicable, agreement through collective bargaining between the carriers and the representatives of the employees affected. In the event of failure to agree, the dispute may be submitted by either party for adjustment in accordance with Section 13.

Section 3 does not provide any grounds for the appellants' argument. First, ALPA, not the appellants, is the representative of the pilots for collective bargaining purposes. Only the collective bargaining representatives (or the carrier) may submit a dispute over the integration of seniority lists to arbitration.[1] Second, the record shows that no dispute exists, in fact the parties' negotiations resulted in an agreement. Therefore, the LPPs provide no grounds for the appellants' action.

II. The Railway Labor Act Grounds

The appellants claim that Delta and ALPA violated the RLA, 45 U.S.C. § 151a and 152 First and Second. These sections govern disputes between business organizations and labor unions that arise out of a collective bargaining agreement. *Hendricks v. Airline Pilots Ass'n*, 696 F.2d 673 (9th Cir. 1983). The sections are not applicable because this case presents no dispute between Delta and ALPA. The appellants also allege that Delta engaged in intimidating and coercive behavior that violated section 152 Third. This section provides that employees have a right to select a collective bargaining representative without "interference, influence, or coercion" from the carrier. Section 152 Fourth prohibits a carrier from interfering with its employees' right to join or to refrain from joining a collective bargaining unit. ALPA

---

[1] Additionally, the pilot's representatives working on the merger agreement could have asked ALPA for an arbitrator if they could not agree. ALPA also could have requested an arbitrator if it could not agree with Delta.

is the only labor organization involved in this case and neither Delta nor ALPA attempted to influence the pilots to join or to leave ALPA or any other union. Therefore, these RLA sections cited by the appellants are inapplicable.

The appellants also argue that Delta and ALPA violated the RLA by demoting Herring and that Delta violated the RLA by refusing to allow appellants to use Delta pilot mailboxes to communicate regarding their protests. No private cause of action exists under the RLA for a group of employees who assert retaliatory conduct based upon employee activities which bear no relationship to establishing a union, or to employer activities that bear no relationship to undermining a union. *Klemens v. Air Line Pilots Ass'n, Int'l*, 736 F.2d 491, 496 (9th Cir.), *cert. denied*, 469 U.S. 1019 (1984). Therefore, these allegations, even if true, do not constitute a violation of the RLA in this situation.

III. The Federal Arbitration Grounds

Appellants also allege that the FAA, 9 U.S.C. §§ 1-14 required the appellees to arbitrate the seniority dispute. This statute is invoked only by a written agreement between the parties to arbitrate. Moreover, the statute specifically excludes from coverage "contracts of employment." Therefore, the appellants' reliance upon the FAA is misplaced.

IV. The Third Party Beneficiary Grounds

The appellants argued that they, as individual employees, are third party beneficiaries of a contract between Western and Delta to provide LPPs. Under this theory, Delta became liable to appellant when it breached the LPPs. This argument fails because Delta did not breach the LPPs, as we discussed above.

V. The Duty of Fair Representation Grounds

The appellants contend that ALPA breached its duty of fair representation ("DFR") owed to them under the RLA. They claim that the union breached this duty by acting in "hostile, arbitrary, and invidious, and discriminatory manner." The appellants base this argument on only unsupported statements that provide no concrete evidence that ALPA breached the duty of fair representation. These statements are insufficient to survive the ALPA's summary judgment motion. The courts allow a union a "wide range of reasonableness" in the conduct of its representation of its members. It must be able to focus on the needs of its whole membership without undue fear of law suits from individual members. *Bautista v. Pan American World Airways*, 828 F.2d 546, 549 (9th Cir. 1987). The integration of a seniority list is a difficult undertaking because of the inevitability that some individual employees will be disadvantaged in comparison to others. In these circumstances, a union does not breach its duty of fair representation to others as long as it proceeds on some reasoned basis. *Clayton v. Republic Airlines*, 716 F.2d 729 (9th Cir. 1983). Therefore, the district court correctly granted summary judgment to ALPA on this issue.

VI. The District Court's Exercise of Discretion on Appellants' Motions

The appellants' arguments that the district court abused its discretion when it denied appellants' motions to compel discovery, to strike portions of declarations, and to add more plaintiffs is without merit. The records show that the appellants did not pursue discovery diligently before summary judgment. *Brae Transp., Inc. v. Coopers & Lybrand*, 790 F.2d 1539, 1443 (sic) (9th Cir. 1986). If the portions of the ALPA declarations to which appellants objected had been stricken, more than sufficient evidence remained to justify summary judg-

ment. *California Architectural Bldg. Products, Inc. v. Franciscan Ceramics, Inc.*, 818 F.2d 1466, 1468 (9th Cir. 1987), *cert. denied*, 108 S.Ct. 698 (1988). The addition of more plaintiffs would have been a futile act that would not have affected the issues underlying the grant of summary judgment. *Klamath-Lake Pharmaceutical Ass'n*, 701 F.2d at 1293. Therefore, the district court did not abuse its discretion in denying appellants' motions.

CONCLUSION

We AFFIRM the judgments of the district court.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 88-6182
USDC No. CV 87-5725-RJK

PATRICK A. HERRING, JR.; RICHARD A. BREMS; JOSEPH HALEY; RONALD L. JENKINS, *et al.*,
Plaintiffs-Appellants,

v.

DELTA AIR LINES, INC.; AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,
Defendants-Appellees.

ORDER

[Filed Sept. 11, 1989]

Before: NELSON and BOOCHEVER, Circuit Judges, and BROWNING*, District Judge.

Appellants' motion for remand is DENIED.

---

* Hon. William D. Browning, United States District Judge for the District of Arizona, sitting by designation.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CV 87-5725-RJK (Tx)

PATRICK A. HERRING, JR., *et al.*,
Plaintiffs,

v.

DELTA AIR LINES, INC., and AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,
Defendants.

MEMORANDUM OF DECISION AND ORDER

[Filed May 11, 1988]

Before the Court are several motions, including each party's motion for summary judgment. At the hearing of this matter on February 8, 1988, the Court stated its inclination to grant the motions for summary judgment filed by defendants Air Line Pilots Association, International ("ALPA") and Delta Air Lines, Inc. ("Delta"), but afforded plaintiffs a final opportunity with which to set forth genuine issues of material fact so as to avoid summary judgment. The Court, having heard and read the evidence, and having read and carefully considered the filings submitted after the February 8, 1988 hearing, makes its decision and order as follows:

(1) Defendant ALPA's motion for summary judgment is granted in full.

(2) Defendant Delta's motion for summary judgment is granted in full.

(3) All other motions before the Court are denied.

(4) Each party is to bear its own costs for all motions.

DISCUSSION

Cases of this nature were summed up perceptively by then Circuit Judge, later Chief Justice, Burger, who wrote: "By its very nature, the process of integrating . . . two seniority-lists can sometimes lead to consequences unfavorable to some." *Outline v. C.A.B.*, 284 F.2d 224, 228 (D.C.Cir. 1960). Many plaintiffs herein are greatly dissatisfied with the consequences they face as a result of the merger between their former employer and Delta, as evidenced by their large turnout at the February 8th hearing Nevertheless, as the Court then stated, this is not a matter of great complexity. Even if we are to accept plaintiffs' characterization of the events as true for purposes of defendants' summary judgment motions, there is no legal justification for this Court to intervene into the agreement borne out of the merger between Western Air Lines and Delta Air Lines.

COUNT 1

In Count 1, plaintiffs assert that Delta and ALPA violated both the Labor Protective Provisions ("LPPs") and the Railway Labor Act ("RLA") by refusing to arbitrate plaintiffs' protest of the integrated seniority list. As a matter of law, neither the LPPs nor the RLA provide these plaintiffs with arbitration rights.

A. *The LPPs*

Plaintiffs rely heavily on § 13 of the LPPs. Section 13 is a general dispute resolution clause that covers a variety of potential disputes which may arise out of a merger. This is not, however, a general dispute. The very situation that concerns us—a disputed seniority list integration—is explicitly covered by § 3 of the LPPs. Section 3 provides:

> Insofar as the merger affects the seniority rights of the carriers' employees, provisions shall be made for the integration of seniority lists in a fair and equitable manner, including, where applicable, agreement through collective bargaining between the carriers and the representatives of the employees affected. In the event of failure to agree, the dispute may be submitted by either party for adjustment in accordance with Section 13.

Obviously, § 3 supercedes the general dispute resolution of § 13 when seniority list integration is at issue. Moreover, arbitration of a seniority list integration dispute is available under § 3 only when two conditions have been met: (1) A "party" within the meaning of § 3 must invoke the arbitration mechanism outlined in § 13, and (2) The "carrier and the representatives of the employees affected" must fail to agree on a list. The undisputed material facts show that neither condition occurred.

Here, the "parties" are the carrier—Delta—and the employees' collective bargaining representative—ALPA. Neither one of these *parties* sought to invoke § 13, *and they reached an agreement.* The very language of the LPPs denies plaintiffs the right to arbitration they claim entitlement to. The LPPs confer no right on individual employees, such as plaintiffs in this case, to submit their disagreement with a negotiated seniority list to arbitration.

This construction is in accord with the consistent administrative and judicial interpretation of identical LPPs, which confirm that § 3 does not contemplate submission of seniority list integration disputes to arbitration where the carriers and union have reached agreement and the dispute is only among a group of the merging employees. *See, e.g., Pan American-National,* Order No. 82-4-75, slip op. at 1 ("We have long held that, pursuant to LPP § 3, the surviving carrier of a . . .

merger and the affected employees [via their representatives of the RLA] are responsible for integrating seniority lists. Only when the carrier and the employees' representatives disagree on seniority do we intrude, by ensuring that the parties arbitrate.").

B. *The RLA*

In Count 1 plaintiffs also allege that Delta's and ALPA's refusal to arbitrate violated the RLA, apparently contending that the RLA either imposes a duty to arbitrate under the LPPs or to "engage in conference" concerning the plaintiffs' protest. Plaintiffs rely on 45 U.S.C. § 151a, § 152 First and Second, which provide generally for the "prompt and orderly settlement of disputes concerning . . . working conditions," and which require carriers to "exert every effort to make and maintain agreements . . . and to settle all disputes [arising thereunder]."

The plain language of §§ 151a and 152 make clear that these sections do not require the carrier and collective bargaining representative to resolve promptly *any* dispute that might arise, but instead are limited to compelling prompt resolution of disputes *arising out* of a collective bargaining agreement. As the court held in *Brotherhood of R.R. Trainmen v. Chicago River & Indiana R.R. Co.*, 229 F.2d 926 (7th Cir. 1956), *aff'd*, 353 U.S. 30, *reh'g denied*, 353 U.S. 948 (1957), these provisions contemplate "the existence of a collective bargaining agreement already concluded," and disputes which relate either to the meaning or proper application of a particular provision in such an agreement with a reference to a specific situation.

The dispute in this case does not involve the interpretation of an existing collective bargaining agreement. Instead, plaintiffs have attempted to raise a dispute between themselves and their collective bargaining representative on the basis that ALPA should not have en-

tered into the agreement concerning seniority integration. Such disputes are not covered by the express provisions of the RLA. It is precisely for this reason that courts have developed the doctrine of the duty of fair representation which provides employees who are represented by a collective bargaining agreement with a means of challenging the actions of the bargaining representative under certain circumstances. The duty of fair representation claim is discussed below under Count 5.

Because, as a matter of law, neither defendant has violated the RLA or breached the LPPs, they are each entitled to summary judgment on Count 1.

COUNT 2

In Count 2, plaintiffs allege that in "intervening" with the employee negotiations which were proceeding pursuant to ALPA merger policies, and in using "intimidation" and "coercion," defendants breached the LPPs and the RLA. Even if plaintiffs' characterization of defendants' conduct is accepted, such conduct does not violate either the LPPs or the RLA.

In Count 2, plaintiffs rely not only on 45 U.S.C. §§ 151a and 152 First and Second, discussed above, but also on § 152 Third and Fourth. A look at these sections shows that they do not apply here. Section 152 Third provides that employees have the right to select a collective bargaining representative without "interference, influence or coercion" from the carrier. Here, no dispute exists concerning employee selection of a collective bargaining representative.

Section 152 Fourth states that a carrier shall not deny the right of its employees to join or refrain from joining a labor organization, and that it shall be unlawful for the carrier to "interfere in any way with the organization of its employees." Again, ALPA was, and is, the

plaintiffs' union at all times, and Delta never once tried to influence anyone to join or to not leave ALPA. There is not even the suggestion that plaintiffs at any time were attempting to organize a rival union.

On both accounts plaintiffs misconceive the purposes and language of the Railway Labor Act. That language refers only to influence and coercion with respect to the *selection* of a collective bargaining representative. *Independent Union of Flight Attendants v. Pan American World Airways*, 789 F.2d 139 (2d Cir. 1986). It does not purport to deal with conduct that takes place *in the collective bargaining process.*

Further, even if the Court were to construe Delta's statements and conduct as "threats," the courts have long recognized that, in the context of collective bargaining, economic threats to gain concessions at the bargaining table are entirely lawful. *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981). It is well settled law that the process of labor negotiations is fundamentally one of "compromise and economic pressure." *NLRB v. Amax Coal Co.*, 453 U.S. 322, 336 (1981). Because the collective bargaining process necessarily contemplates both the use and threatened use of economic weapons, the courts have refused to rescind labor contracts which might otherwise be considered coercive outside the context of labor negotiations.

Here, Delta and ALPA reached agreement on an integrated seniority list. Absent unfair representation, the RLA does not grant this Court jurisdiction over an unfair bargaining claim when the parties have bargained and reached an agreement.

COUNT 6

In Count 6, plaintiffs contend that defendants violated the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 *et seq.*, by refusing to aribtrate the seniority dispute under

the LPPs. Again accepting plaintiffs' version of the facts, defendants are entitled to summary judgment.

Section 2 of the FAA requires a written agreement to arbitrate in order to invoke the Act. As was discussed in the analysis of Count 1, the LPPs do not provide for arbitration of the integrated seniority list at the request of individuals when those individuals are represented by a collective bargaining representative, and they do not provide for arbitration at all in cases where the carrier and the collective bargaining representative have agreed upon a list. On this basis alone Count 6 fails.

Moreover, § 1 of the FAA specifically excludes "contracts of employment of seamen, railroad employees or any other class of workers engaged in foreign or interstate commerce." The statute does not specifically define "contracts of employment," but it is nonsensical to accept plaintiffs' argument that the LPPs are a commercial contract and not a contract of employment.

The LPPs are designed specifically for the area of mergers, and are for the protection of employees. They are the subject of many cases in the labor area. In effect, they are indistinguishable from a collective bargaining agreement: they establish conditions and terms of employment for the benefit of an identifiable group; they provide for collective bargaining over that term or condition; and they set forth procedures for resolving disputes if the union and employer cannot reach agreement. Further, as in the context of a collective bargaining agreement, in Count 5 plaintiffs allege that ALPA breached its duty of fair representation in connection with its negotiations over the integrated seniority list.

In short, the LPPs do not grant these plaintiffs a right to invoke the Federal Arbitration Act, and defendants should be granted summary judgment on Count 6.

COUNT 7

In Count 7, plaintiffs allege that they are third-party beneficiaries of the agreement between Delta and Western to provide LPPs, and that because Delta "breached" the LPPs they have a claim for breach of contract.

As discussed above, defendants did not breach the LPPs. Since no breach occurred, plaintiffs cannot be the beneficiaries of any such breached contract, and Count 7 fails.

COUNT 5

In Count 5, plaintiffs contend that ALPA breached its duty of fair representation under the RLA by acting in a "hostile, arbitrary, invidious, and discriminatory manner." Plaintiffs contend that their supplementary Statement of Genuine Issues of Material Fact helps demonstrate that defendants' summary judgment motions should be denied. This document, however, simply summarizes what plaintiffs claim to believe.

Similar tactics were rejected in a duty of fair representation ("DFR") suit in *United Independent Flight Officers, Inc. v. United Air Lines, Inc.*, 572 F. Supp. 1494 (N.D.Ill. 1983), *aff'd*, 756 F.2d 1274 (7th Cir. 1985). There, the court held that "[p]laintiffs' attempt to develop their allegations by unsupported statements in their memorandum opposing summary judgment" provided no "concerete evidence" of a breach of the duty of fair representation and could not defeat ALPA's motion for summary judgment. *Id.* at 1508.

Here, plaintiffs' DFR allegations are steeped in innuendo. The facts show that ALPA was at no time bound to arbitrate the integrated seniority list. In the context of representing its members at the bargaining table, a union must be allowed "a wide range of reasonableness" because it must be able to "focus on the needs of its membership as a whole without undue fear of law-

suits from individual members disgruntled by the result of the collective process." *Bautista v. Pan American world* (sic) *Airways*, 828 F.2d 546, 549 (9th Cir. 1987). ALPA's conduct fell well within the "wide range of reasonableness" the Court must accord it. "Partisan exhortation delivered under conditions of conflict" are not the basis of a DFR suit. *Id.* at 551.

There is a body of cases extant which deals with DFR suits within the integration of seniority lists-merger area. *See, e.g., Humphrey v. Moore*, 375 U.S. 335 (1962). These cases have observed that within this context, it is almost inevitable that some individuals will be injured, and that even where the same union represents both bodies of employees, it does not breach its DFR to individual members so long as it proceeds on some reasoned basis. *Clayton v. republic* (sic) *Airlines*, 716 F.2d 729 (9th Cir. 1983). The facts, when sifted from the innuendo, show that ALPA at the very least met this standard and is entitled to summary judgment on Count 5.

COUNTS 3 & 4

Count 3 alleges that by demoting Herring, Delta violated the RLA, and adds in an allegation that ALPA participated in this violation. Count 4 alleges that Delta (ALPA is not named in Count 4) violated the RLA by refusing to allow plaintiffs to use Delta pilot mailboxes to communicate regarding their protest.

There is absolutely no evidence to tie in ALPA to the alleged facts in Count 3, and they are entitled to summary judgment on that basis. Moreover, defendants are entitled to summary judgment on Counts 3 and 4 because both the plain language of the RLA and the cases decided thereunder make clear that the RLA does not cover the activity alleged. These plaintiffs were not engaged in union-related activity, as is required if one wishes to state a private cause of action under the RLA. There are no controlling cases, including the cases cited

by plaintiffs in their papers, that hold that a private cause of action exists under the RLA for a group of employees who assert retaliatory conduct based upon activities which bear no relationship to organizing to establish a union or company activity designed to undermine a union.

THEREFORE, IT IS ORDERED that each defendant's motion for summary judgment be GRANTED. IT IS FURTHER ORDERED that all other motions before the Court are DENIED. Each party is to bear its own costs for all motions.

The Clerk shall send, by United States mail, a copy of this Memorandum of Decision and Order to counsel for the parties.

DATED: May 10, 1988.

/s/ Robert J. Kelleher
ROBERT J. KELLEHER
Senior Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. CV 87-5725-RJK

PATRICK HERRING, *et al.*

v.

DELTA AIR LINES, INC., *et al.*

Present: HON. ROBERT J. KELLEHER, Judge
JAMES A. KIMBALL, Deputy Clerk

CIVIL MINUTES—GENERAL

July 25, 1989

PROCEEDINGS: Plaintiffs' Motion for Relief from Judgment Pursuant to Fed.R.Civ.P. 60(b)(2)

THE COURT has before it plaintiffs' motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b)(2) and defendants' opposition thereto. Said motion was taken under submission on July 17, 1989, the parties having waived oral argument pursuant to Local Rule 7.11.

By this motion plaintiffs seek to reopen the Court's Order of May 12, 1988 granting summary judgment in favor of defendants on all counts. Plaintiffs have appealed the Order, and their appeal is presently pending.

The filing of the notice of appeal divests this Court of jurisdiction to dispose of a Rule 60(b) motion absent a

remand from the Court of Appeals. *Long v. Bureau of Economic Analysis*, 646 F.2d 1310, 1318 (9th Cir. 1981); *Smith v. Lujan*, 588 F.2d 1304, 1307 (9th Cir. 1979). The Court is therefore limited to indicating whether it will entertain or grant the motion. *Id.*

IT IS HEREBY ORDERED that the Court will not entertain or grant plaintiffs' motion.

The Clerk will send a copy of this Order to counsel.

/s/ JAK
Initials of Deputy Clerk

STATUTORY PROVISIONS

RAILWAY LABOR ACT

§ 151a. General purposes

The purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this chapter; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

§ 152. General duties

First. Duty of carriers and employees to settle disputes

It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

FEDERAL ARBITRATION ACT

§ 1. "Maritime transactions" and "commerce" defined; exceptions to operation of title

"Maritime transactions", as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; "commerce", as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.

§ 2. Validity, irrevocability, and enforcement of agreements to arbitrate

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

§ 4. Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury find that no agree-

ment in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

DELTA-WESTERN
LABOR PROTECTIVE PROVISIONS

Section 3. Insofar as the merger affects the seniority rights of the carriers' employees, provisions shall be made for the integration of seniority lists in a fair and equitable manner, including, where applicable, agreement through collective bargaining between the carriers and the representatives of the employees affected. In the event of failure to agree, the dispute may be submitted by either party for adjustment in accordance with section 13.

* * * *

Section 13. (a) In the event that any dispute or controversy (except as to matters arising under section 9) arises with respect to the protections provided herein, which cannot be settled by the parties within 20 days after the controversy arises, it may be referred by any party to an arbitrator selected from a panel of seven names furnished by the National Mediation Board for consideration and determination. Unless an extension of time is agreed upon in writing by all parties, the party desiring arbitration shall give the other party or parties and the National Mediation Board written notice of the party's decision to invoke arbitration no later than 45 days after the controversy arises. The parties shall select the arbitrator from such panel alternately striking names until only one remains, and he shall serve as arbitrator. Expedited hearings and decisions will be expected, and a decision shall be rendered within 90 days after the controversy arises, unless an extension of time is mutually agreeable to all parties. The salary and expenses of the arbitrator shall be borne equally by the carrier and (i) the organization or organizations representing the employee or employees, or (ii) if unrepresented, the employee or employees or group or groups of employees. The decision of the arbitrator shall be final and binding on the parties.

(b) The above condition shall not apply if the parties by mutual agreement determine that an alternative method for dispute settlement or an alternative procedure for selection of an arbitrator is appropriate in their particular dispute. No party shall be excused from complying with the above condition by reason of having suggested an alternative method or procedure, unless and until that alternative method or procedure shall have been agreed to by all the parties.

LIST OF PETITIONERS PURSUANT TO RULE 14.1(b)

1. Aakhus, Donovan E.
2. Abel, Richard C.
3. Adams, Robert A.
4. Akana, Akaiko A.
5. Allen, Jack L.
6. Allen, R.E.
7. Allen, Robert J.
8. Allen, Thomas R.
9. Alley, Michael L.
10. Amos, Walter N.
11. Anderson, Clarence A.
12. Anderson, J. Eric
13. Archer, Gregg B.
14. Arnold, Ronald J.
15. Arps, Stephen G.
16. Asay, Donald E.
17. Ashworth, David B.
18. Attwood, Guy E.
19. Avary, Donald D.
20. Aversman, James R.
21. Azemard, Anthony
22. Baccitich, David J.
23. Bagley, Kent K.
24. Baker, Harry C.
25. Baker, Lawrence E.
26. Bokos, Thomas M.
27. Banks, Richard A.
28. Barnhart, James R., Jr.
29. Barnum, Lewis, III
30. Barstow, James L.
31. Bartz, Charles E.
32. Bastiani, James
33. Bauer, David
34. Bauer, Philip G.
35. Bauer, Russell B.
36. Beal, David R.

37. Beck, Richard A.
38. Bell, William W.
39. Bendik, Carl M.
40. Bennett, Robert W.
41. Benson, Jerome A.
42. Benton, Douglas A.
43. Berens, Roger J.
44. Berryhill, Joseph A.
45. Best, Henry G.
46. Betts, Charles C.
47. Bibb, Harry L., Jr.
48. Birch, Frederick R.
49. Bishop, Ross M.
50. Black, Eugene R.
51. Blackman, Douglas E.
52. Blair, Thomas W.
53. Blake, A.G.
54. Blandford, John R.
55. Bodmer, John A.
56. Bodnar, James J.
57. Boline, Laurel F.
58. Bone, John R.
59. Bonfiglio, Peter, Jr.
60. Booher, Bruce R.
61. Boschetto, Dale N.
62. Boswell, Lance
63. Bourland, D.L.
64. Boyce, A.W.
65. Bradfield, Richard C.
66. Brady, John M.
67. Brant, William C.
68. Brems, Richard A.
69. Brennan, George A., Jr.
70. Brennan, James W.
71. Brickert, Richard T.
72. Brigham, Don
73. Brittenham, John C.
74. Brown, Frank D.

75. Brown, John Michael
76. Brown, Robert D.
77. Browne, Paul D.
78. Brushwylor, Robert
79. Buck, Peter D.
80. Buckelew, Arthur L.
81. Buechler, Richard P.
82. Buisson, James L.
83. Burgess, Jerald C.
84. Burkland, R.W.
85. Burnett, Gerald R.
86. Burns, John E.
87. Burrell, Russell K.
88. Burson, Gene Douglas
89. Busby, Leon R.
90. Bush, Jack B.
91. Butler, Ronald V.
92. Byrne, Charles R.
93. Byron, A.W.
94. Bytheway, Alvin R.
95. Calderon, Kenneth A.
96. Cameron, Murdo O.
97. Campbell, Donald E.
98. Cardon, Vern R.
99. Carollo, Robert A.
100. Carrol, Paul L., Jr.
101. Carter, D.L.
102. Cartwright, Allan L.
103. Castle, C.N.
104. Causey, O.H.
105. Cecka, R.J.
106. Chakerian, Gregory V.
107. Chamberlin, Alvin W.
108. Chambers, Jack P.
109. Chambre', Rudy R.
110. Chapman, Donald Ray
111. Chapman, Duane
112. Cheney, C.J.

113. Clark, Glen D.
114. Clark, John M.
115. Clausen, Christian M.
116. Clounch, Mark R.
117. Coe, K.M.
118. Cole, Richard D.
119. Colette, Thomas J.
120. Collins, Clifton M.
121. Collins, Marshall W.
122. Coln, William A., III
123. Compton, Raymond D.
124. Connel, Allan A., III
125. Cook, H.K.
126. Cook, Martin T.
127. Cook, Wendell L.
128. Cook, William S.
129. Cope, James M.
130. Coxe, Charles R.
131. Crawford, Thomas P.
132. Creeden, Wilcox J.
133. Cullem, Daniel F.
134. Davies, Donald E.
135. Davila, Manuel
136. Davis, Edward H.
137. Davis, Gale C.
138. Davis, Robert B.
139. Davis, T.H.
140. Deakers, Richard P.
141. Degnan, James E.
142. DeLong, Roger L.
143. Delzer, L.C.
144. Demosthenes, T.A.
145. Dent, C.S.
146. Der Manuel, E.M.
147. Detwiler, Mark J
148. DeVaney, Daniel T.
149. DeVaney, Roy W., Jr.
150. Diehl, Ross E.

151. Dishon, Larry E.
152. Doherty, Francis A.
153. Doiron, W. David
154. Dorris, John D.
155. Douglass, Clement J., III
156. Dowell, Lester R.
157. Doyle, Michael A.
158. Dressler, David C.
159. Duncan, Roderick M.
160. Dunlap, James V.
161. Dunn, Edward D.
162. Duran, Frank T.
163. Duricka, Richard M.
164. Edson, Robert A.
165. Edwards, Monte R.
166. Eldred, Clarence W.
167. Elin, Richard A.
168. Ellis, Ernest F.
169. Ellison, Martin D.
170. Ellmore, C.A.
171. Elmore, Jerry O.
172. Elsner, Bernard M.
173. Elstad, Erik L.
174. Engel, Robert D.
175. Erwin, William T.
176. Etter, George W.
177. Eustis, James B.
178. Evans, Earl E., Jr.
179. Evans, Stuart C.
180. Everson, Ken W., Jr.
181. Exley, Ronald W.
182. Farrell, Robert J.
183. Ferg, Richard G.
184. Ferguson, James T., III
185. Fernandez, Peter S.
186. Fernandez, Ralph E.
187. Ferrell, H. Lee
188. Ferrell, Mallory H., Jr.

189. Ferris, Roger E.
190. Finnegan, John M.
191. Flaherty, George F.
192. Flandreau, Donald H.
193. Fletcher, Ferinand E.
194. Fletcher, Steve
195. Forster, Thomas L.
196. Foster, David V.
197. Fowler, Arthur H.
198. Fowler, Steve
199. Fox, Jim
200. Franks, Stanley K., Jr.
201. Freeding, Richard A., Jr.
202. Frey, T.E.
203. Frye, Arthur R.
204. Fuller, Roger Dell, Jr.
205. Gaeb, H. Michael
206. Gaillard, William B.
207. Gaines, Alan L.
208. Gallagher, J.P.
209. Gallagher, William R., Jr.
210. Gerrior, William P.
211. Gibbons, James A.
212. Gibbs, James Paul
213. Giery, Patrick J.
214. Gilbert, Ronald G.
215. Gillease, Dennis B.
216. Gillespie, A.A.
217. Gilmore, Ronald G.
218. Givens, Williams G.
219. Glazar, Richard C.
220. Glazier, Patrick M.
221. Goggin, John L., Jr.
222. Goldt, Thomas G.
223. Goltry, W.H.
224. Gomez, Alfred, Jr.
225. Gonzales, Dennis M.
226. Gorrell, Don L.

227. Gottschalk, Gary L.
228. Graff, Randall M.
229. Grammer, Bryan K.
230. Graue, James T.
231. Gray, Michael Lewis
232. Greenwood, Jeffrey G.
233. Grimditch, William H.
234. Grippo, Lawrence A.
235. Grohs, Joseph M.
236. Grose, Dennis R.
237. Grundy, Joel R.
238. Guest, Raymond R.
239. Guiton, Leonard A., Jr.
240. Gullickson, Reese E.
241. Gustaveson, Roy C.
242. Haas, Tallmadge J.
243. Halcomb, Robert D., Jr.
244. Hales, Dent
245. Haley, Joseph
246. Hall, Edward M.
247. Hallinen, John C.
248. Hallor, A.E.
249. Hallsman, Charles
250. Hamilton, Roger L.
251. Hannan, Michael T.
252. Hanson, David E.
253. Harbold, Dean R.
254. Harman, Barry W.
255. Harrison, John C.
256. Hartman, William
257. Harwood, James C.
258. Hash, George J.
259. Hathcock, Richard B.
260. Hayes, James L.
261. Hearn, R.A.
262. Heatherly, James C.
263. Hedges, Grant K.
264. Heinrich, Edwin C., Jr.

265. Heintz, Kenneth H.
266. Heinz, H.C., Jr.
267. Helker, Harlen J.
268. Hellwig, Erwin Douglas
269. Hemminger, John A.
270. Herring, Patrick A., Jr.
271. Herrington, Norman L.
272. Herriott, Robert P.
273. Hicks, Gerald F.
274. Hill, Robert Daniel
275. Hines, Johnny H.
276. Hitchcock, Thomas .
277. Hoffman, Peter T.
278. Hoffman, William C.
279. Hogan, John V.
280. Holiday, Ray K.
281. Homann, Robert L.
282. Honeycutt, Jimmy L.
283. Horrell, Roger T.
284. Horton, Larry F.
285. Hoskins, Lonnie, Jr.
286. Houdeshel, Harry F., III
287. Housel, Herschel C.
288. Howatt, J.O.
289. Hoyt, Lewis E.
290. Huerta, J. Jess
291. Hunter, Thomas E., Jr.
292. Hymel, Philip J.
293. Ice, Willard F., Jr.
294. Interrieden, Richard L.
295. Insogna, Dominic M.
296. Inzana, Anthony F., II
297. Isler, Robert T.
298. James, Tommy L.
299. Jeffery, Kirk W.
300. Jeffrey, Kent A.
301. Jella, Jeffrey D.
302. Jenkins, Ronald L.

303. Johnson, Christopher W.
304. Johnson, David C.
305. Johnson, Dennis A.
306. Johnson, Donald M., Jr.
307. Johnson, Kenneth L.
308. Johnson, Lance J.
309. Johnson, Linn V.
310. Johnson, Mark L.
311. Johnson, Richard A.
312. Johnson, Scott L.
313. Jones, John Douglas
314. Jones, Walter B.
315. Jones, William Larry
316. Jorgensen, Stanley Alfred
317. Joslyn, Wilbert C.
318. Just, Peter G.
319. Kaminski, Steve
320. Kastler, Mark N.
321. Katka, Doran W.
322. Keesey, I.L.
323. Kelly, Budd J.
324. Kennedy, Michael E.
325. Kerr, David T.
326. Keyes, Jack L.
327. Kimbrel, Michael G.
328. Kisla, Daniel F.
229. Knutson, James D.
330. Komberec, C.R.
331. Koski, Duane M.
332. Koster, Kenneth K.
333. Kowalzyk, Dennis J.
334. Kramer, David W.
335. Kratzer, Frank
336. Krayniak, George L.
337. Krebs, Richard G.
338. Kuntz, Gordon B.
339. Lagomarsino, Dan A.
340. Landroth, Dale M.

341. LaPierre, Valmere M.
342. Laraux, Charles
343. Larsen, Mark H.
344. Law, C.W.
345. Layman, Phillip B.
346. Lecy, H.E.
347. Leddy, P.F.
348. Lee, John B.
349. Lentz, Gregory P.
350. Leseberg, Mark, E.
351. Lewis, Donald W.
352. Lewis, Robert H.
353. Lindquist, Robert M.
354. Little, Frank R.
355. Loeber, A. Wayne
356. Loucka, William M.
357. Lovell, William C., Jr.
358. Lowenberg, Larry W.
359. Loyd, Tracy E.
360. Lugar, Jeffrey R.
361. Luger, Jerome R.
362. Lundblad, Kurt D.
363. Luplow, Kenneth B.
364. Lyon, David E.
365. Lyon, Robert G., Jr.
366. Lyons, Terence
367. MacKenzie, J.D.
368. MacLean, William
369. Maddox, Donald L.
370. Madigan, Edwin F.
371. Magnell, Michael K.
372. Maher, Michael P.
373. Mainwaring, Stephen A.
374. Malone, D.P.
375. Mantei, Ronald H.
376. Margolin, Donald B.
377. Marshall, Sheff
378. Martin, Daryl T.

379. Martin, Richard D.
380. Mason, Wallace J.
381. Massey, Calvin L., Jr.
382. Mather, David R.
383. Mayer, John S.
384. Maxey, W.R.
385. McAdams, John A.
386. McCarthy, Matthew A.
387. McCauley, Keith C.
388. McCrary, Richard A.
389. McCready, James L.
390. McCullough, Charles J.
391. McDole, Joe C.
392. McDonald, Clinton R.
393. McDonald, Gerald H.
394. McGaw, William A.
395. McGee, Michael R.
396. McGibney, Michael D.
397. McGrath, P.R.
398. McGuire, Fay W.
399. McHargue, Gary R.
400. McKelvey, David J.
401. McKinnon, Alan J.
402. McLaughlin, John E.
403. McMahan, William R.
404. McMillan, Gerald M.
405. McMullen, William T.
406. Means, Don R.
407. Meier, L. Duane
408. Melton, Michael L.
409. Merena, David Bruce
410. Messmore, Michael H.
411. Messner, Michael W.
412. Meyers, James Y.
413. Miller, Gary L.
414. Miller, Harlan L., Jr.
415. Milliken, John L., Jr.
416. Miltner, John H.

417. Misevic, Bruno V.
418. Moeller, Terry J.
419. Mongold, Joe W.
420. Monroe, Robert S.
421. Moody, J.D.
422. Moore, Arthur A.
423. Moore, Edward L.
424. Morrison, Alexander J.
425. Mosdale, Kent B.
426. Moyer, Gilbert, Jr.
427. Mrak, John R.
428. Mueller, Rodney A.
429. Muesegaes, Fred G.
430. Mullan, Brian F.
431. Mullen, David D.
432. Mullin, Michael
433. Mumford, Richard
434. Munton, James W.
435. Murphy, James C.
436. Myli, Howard O.
437. Nagy, Steve B.
438. Neff, Evan A.
439. Nelson, Jack L.
440. Nelson, Ronald L.
441. Nevitt, James E.
442. Newlon, Gene W.
443. Nichols, Peter D.
444. Nielson, Frederick P.
445. Nilsson, Mervin
446. Norstrom, John S.
447. Norton, Lynn M.
448. Oberg, Seth M.
449. O'Brien, Jerold
450. O'Brien, Martin J.
451. O'Dell, Thomas M.
452. O'Gara, Michael L.
453. Olbright, Lawrence D.
454. Onion, Brad

455. Orgera, Winthrop B.
456. Osburn, S.R.
457. Paciolla, Anthony F.
458. Pack, David E.
459. Palmer, William Ware, III
460. Pankratz, Richard L.
461. Patton, Hersch
462. Paulsen, Paul E.
463. Pedrazzini, Donald J.
464. Peel, Dale F.
465. Penrose, Michael P.
466. Peri, Edward L.
467. Peterman, Joseph A.
468. Peters, Gordon E.
469. Peterson, Larry W.
470. Pfister, Henry C., Jr.
471. Picard, Robert D.
472. Pierce, Louis R.
473. Pierce, Richard S.
474. Pierce, Robert A.
475. Piland, Ray G.
476. Pittman, James R.
477. Plummer, David A.
478. Poland, Peter A.
479. Pollak, James E.
480. Pollock, Robert D., Jr.
481. Poplet, Keith R.
482. Poschwatta, Carl L.
483. Poste, James D.
484. Potter, Gerald G.
485. Potter, Harold R.
486. Poust, Charles E.
487. Powell, Leo V., III
488. Prentke, Lawrence A.
489. Primich, Charles G.
490. Prosch, Thomas J.
491. Quilter, Charles John, II
492. Rajala, Orlin John

493. Rand, William C.
494. Ransford, Dale E.
495. Ray, R.E.
496. Reaume, Ronald R.
497. Rector, John C.
498. Reed, David L.
499. Reed, Gary L.
500. Reed, Peter T.
501. Rees, Paul J.
502. Reinhard, David J.
503. Rhoades, C.A.
504. Rhymers, Craig A.
505. Rich, Ronald P.
506. Richardson, Harold J.
507. Richardson, Terril J.
508. Rinderknecht, Ronald T.
509. Rinehart, Terry L.
510. Roberson, Floyd
511. Robertson, Wesley L., III
512. Robinson, Charles E., Jr.
513. Rockness, Norman P.
514. Rogers, Gordon G.
515. Rosenberg, Stephen M.
516. Ross, M.E.
517. Rottschafer, Gerald Jay
518. Roy, Allan H.
519. Royall, Michael B.
520. Rozema, Melvin A.
521. Ruminer, William L.
522. Rusher, Robert C.
523. Salz, Les
524. Saner, Carl M.
525. Saporito, J.N.
526. Sapp, Dennis J.
527. Scanlon, James P.
528. Schachle, P.J.
529. Scheinblum, Robert P.
530. Schmid, Robert

531. Schmutte, Gene
532. Schultz, Fred N.
533. Schwartz, James L.
534. Scott, Charles A.
535. Scott, R.D.
536. Scott, Roland B., Jr.
537. Seim, Raymond L.
538. Sellards, Robert L.
539. Seward, Scott B.
540. Shackelford, Kenneth L.
541. Sharp, Harry G.
542. Sheldon, Geoffrey H.
543. Shepperd, Robert K.
544. Sherman, Charles Arthur, Jr.
545. Sherman, Craig A.
546. Shurtleff, Bruce K.
547. Sievers, Richard B.
548. Simpson, William A.
549. Sledge, L.F.
550. Sluyter, V.C.
551. Smith, D.F.
552. Smith, Daniel E.
553. Smith, Gary P.
554. Smith, Lawrence D.
555. Smith, Robert E.
556. Snider, William F.
557. Snipes, Tom
558. Sordi, Roy J.
559. Sork, Mark P.
560. Speth, Stephen A.
561. Spielman, Robert W.
562. Sponhauer, Richard G.
563. Sprenkle, John H.
564. Stamps, Jerry L.
565. Starkey, J. Paul
566. Stayton, Van A.
567. Stears, Thomas M.
568. Stedfield, William C.

569. Steele, Kenneth R.
570. Stefferud, Christian D.
571. Stewart, Duncan M.
572. Sticka, Dale A.
573. Stokes, Howard Warner
574. Stuppy, Laurence J., II
575. Sublett, Gail Wm.
576. Swanson, John E.
577. Takabayashi, Glenn
578. Takoushian, Allan
579. Taylor, Curtis A.
580. Taylor, Gene
581. Taylor, J.B.
582. Tebay, Richard D.
583. Tekrony, Kent D.
584. Thomas, Frank G.
585. Thomas, Jack E.
586. Thompson, Gary N.
587. Thompson, Robert L.
588. Thorn, Donald L.
589. Thornburgh, Jon
590. Thornbury, David W.
591. Tichacek, Rich F.
592. Tidwell, James A.
593. Tieken, Robert
594. Timmons, Clifford E.
595. Tugaw, Leslie
596. Tuthill, Timothy A.
597. Twaddle, Robert R.
598. Tynan, Martin F.
599. Uhlenhop, Michael H.
600. Urdahl, Richard O.
601. Utter, David E.
602. Valadez, Ernesto E.
603. Valenzuela, John M.
604. Van Dyke, Richard E.
605. Veon, Roger
606. Vincenz, Gary

607. Wadsley, Victor J.
608. Wait, Dwight R.
609. Wakefield, Anthony L.
610. Walker, Gary D.
611. Walker, Valerie J.
612. Wall, David R.
613. Wallintner, Thomas M.
614. Walton, Michael J.
615. Warburton, James M.
616. Warner, Robert W.
617. Wascher, Vernon E.
618. Watson, Michael D.
619. Watson, Thomas D.
620. Weatherly, James G.
621. Weaver, R. Taft
622. Weber, Stephen J.
623. Weeks, Roy F.
624. Weigel, William R., Jr.
625. Welsh, Jack S.
626. Wendelbo, Lee R.
627. West, James E.
628. West, Thomas E.
629. Wetzsteon, Sterling M.
630. White, Benny E.
631. Whitehouse, R.E.
632. Whitesell, Jeffrey H.
633. Wilkening, James A.
634. Will, Howard E., Jr.
635. Willetts, Peter J.
636. Williams, Delmar P.
637. Williams, James E.
638. Williams, James L.
639. Willis, Paul C.
640. Wills, Dennis L.
641. Wills, Ronald H.
642. Wilson, Maurice G.
643. Wilson, William L.
644. Winkler, W.H.

645. Wolfe, James L.
646. Wood, John O.
647. Wood, Richard S.
648. Wood, Robert G.
649. Wood, Vern M.
650. Wood, Winfield W.
651. Wright, Michael D.
652. Yonaka, Steven R.
653. Young, W. Bruce
654. Youngblood, R. Ricardo
655. Younker, Melvin E.
656. Zajic, Halden M.
657. Zamarin, Mark W.
658. Zavislak, Raymond W.
659. Zimmer, Edward T.
660. Zink, W.W.
661. Gooch, Richard A.